

Prosecuting and Adjudicating Election Offenses

Title 20A, Chapter 1, Part 7

- Criminal Proceedings
- Civil Proceedings

A petition alleging an election violation by a candidate may be filed by . . .

- a registered voter who had the right to vote for the candidate
- a personal campaign committee of the candidate
- a member of the candidate's personal campaign committee; or
- an election official.

Petition is filed with the lieutenant governor who gathers information and determines “if a special investigation is necessary.”

Problems:

- What if the petition is against the lieutenant governor or the lieutenant governor has another conflict of interest?
- Doesn't specify how the determination of necessity is made (i.e. grounds, standard)

If the lieutenant governor determines that a special investigation is necessary, the lieutenant governor:

- refers the information to the attorney general, or . . .
- if the attorney general has a conflict of interest, appoints special counsel (S.B. 289, 2013 General Session).

Attorney general is required to:

- bring a special proceeding to investigate and determine whether there has been an election code violation; AND
- appoint special counsel to conduct that proceeding on behalf of the state

Special counsel appointed by the lieutenant governor is required to:

- bring a special proceeding to investigate and determine whether there has been an election code violation; AND
- conduct that proceeding on behalf of the state

If it appears “from the petition or otherwise” that probable cause exists that a violation has occurred, the attorney general (or the lieutenant governor if there is a conflict) shall:

- grant leave to bring the preceding;
and
- appoint special counsel to conduct the proceeding.

Problems:

- Unclear whether this is the same proceeding mentioned earlier to “investigate and determine whether there has been an election code violation” or if this is a subsequent proceeding.
- If it is the same proceeding, is the determination of probable cause made before, or at some point during, the proceeding?

If leave is granted to bring “the proceeding,” the **registered voter** “**may**” bring a special proceeding in district court “**in the name of the state.**”

Problems:

- Does this mean that the state is completely out of it now? Should it be?
- Depending on the outcome, who is, or should be, responsible for costs or fees?
- Do we want the registered voter to be able to act “in the name of the state?”
- What if the registered voter decides not to bring a proceeding?

The special proceeding in district court is:

- a civil action
- heard by the court (not a jury)
- given precedence over other civil actions

COSTS

- If the plaintiff wins, the judge may order “taxable costs and disbursements” against the defendant.
- The court may not award costs to the defendant unless the action was brought in bad faith.

APPEAL

The attorney general (or the lieutenant governor) may appoint special counsel on appeal.

CONSTITUTIONALITY

Utah Constitution

Article VI, Section 19. [Officers liable for impeachment -- Judgment -- Prosecution by law.]

The Governor and other State and Judicial officers shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, and punishment according to law.

CONSTITUTIONALITY

- Attorney general is a state officer (Utah Constitution, Article VII, Section 18 and Article XXIV, Section 12).
- Utah Constitution, Article VI, Section 21. [Removal of officers.]
All officers not liable to impeachment shall be removed for any of the offenses specified in this article, in such manner as may be provided by law.
- Exclusive remedy for removal?

CONSTITUTIONALITY

Quo Warranto:

- Remedy to determine the right or title to a public office.
- May be used to oust an incumbent who is unlawfully holding a public office.

CONSTITUTIONALITY

State ex rel. Stain v. Christensen, 35 P.2d 775 (Utah 1934).

- Legislature enacted a requirement that a person elected as state treasurer post a bond
- Requirement not included in the Utah Constitution
- Court upheld the requirement to post a bond
- In a quo warranto action, the court declared the office forfeited by the elected treasurer who failed to post the bond

CONSTITUTIONALITY

State ex rel. Stain v. Christensen,
35 P.2d 775 (Utah 1934).

“While the lawmaking power may not by declaratory enactment create a vacancy, it may within constitutional limitations add new causes which produce a vacancy.”